

AMENDED IN SENATE MAY 4, 2009

**SENATE BILL**

**No. 353**

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**Introduced by Senator Dutton**

February 25, 2009

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An act to amend Sections 17072, ~~17215~~, and 19184 of, *to amend and repeal Sections 17131.4, 17131.5, 17215.1 and 17215.4 of*, and to add Sections 17138.5, ~~17138.6~~, and 17216 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 353, as amended, Dutton. Income tax: health savings account.

The Personal Income Tax Law authorizes various deductions in computing income that is subject to tax under that law.

This bill would allow a deduction in connection with health savings accounts in conformity with federal law for each tax year beginning on or after January 1, 2009. In general, the deduction would be an amount equal to the aggregate amount paid in cash during the taxable year by, or on behalf of, an eligible individual, as defined, to a health savings account of that individual, as provided. This bill would also provide related conformity to that federal law for each tax year beginning on or after January 1, 2009, with respect to treatment of the account as a tax-exempt trust, the allowance of rollovers from Archer Medical Savings Accounts, *health flexible spending arrangements, or health reimbursement accounts* to a health savings account, and penalties in connection therewith.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 17072 of the Revenue and Taxation Code is amended to read:

17072. (a) Section 62 of the Internal Revenue Code, relating to adjusted gross income defined, shall apply, except as otherwise provided.

(b) Section 62(a)(2)(D) of the Internal Revenue Code, relating to certain expenses of elementary and secondary school teachers, shall not apply.

(c) The deduction allowed by Section 17216, relating to health savings accounts, is allowed in computing adjusted gross income.

(d) The amendments made to this section by the act adding this subdivision shall apply only to each taxable year beginning on or after January 1, 2009.

SEC. 2. Section 17131.4 of the Revenue and Taxation Code is amended to read:

17131.4. (a) Section 106(d) of the Internal Revenue Code, relating to contributions to health savings accounts, shall not apply.

(b) This section shall apply to taxable years beginning on or after January 1, 2005, and before January 1, 2009.

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed.

SEC. 3. Section 17131.5 of the Revenue and Taxation Code is amended to read:

17131.5. (a) Section 125(d)(2)(D) of the Internal Revenue Code, relating to the exception for health savings accounts, shall not apply.

(b) This section shall apply to taxable years beginning on or after January 1, 2005, and before January 1, 2009.

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed.

~~SEC. 2.~~

SEC. 4. Section 17138.5 is added to the Revenue and Taxation Code, to read:

17138.5. For each taxable year beginning on or after January 1, 2009, Section 106 of the Internal Revenue Code, as amended by Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173), 302 of the Tax Relief and Health Care Act of 2006 (Public Law 109-432),

1 relating to health savings accounts, shall apply, except as otherwise  
2 provided.

3 *SEC. 5. Section 17215.1 of the Revenue and Taxation Code is*  
4 *amended to read:*

5 17215.1. (a) Section 220(f)(5) of the Internal Revenue Code,  
6 relating to rollover contributions, shall not apply.

7 (b) *This section shall apply to taxable years beginning on or*  
8 *after January 1, 2005, and before January 1, 2009.*

9 (c) *This section shall remain in effect only until January 1, 2014,*  
10 *and as of that date is repealed.*

11 ~~SEC. 3. Section 17138.6 is added to the Revenue and Taxation~~  
12 ~~Code, to read:~~

13 ~~17138.6. For each taxable year beginning on or after January~~  
14 ~~1, 2009, Section 125 of the Internal Revenue Code, as amended~~  
15 ~~by Section 1201 of the Medicare Prescription Drug, Improvement,~~  
16 ~~and Modernization Act of 2003 (Public Law 108-173), relating to~~  
17 ~~health savings accounts, shall apply, except as otherwise provided.~~

18 ~~SEC. 4. Section 17215 of the Revenue and Taxation Code is~~  
19 ~~amended to read:~~

20 ~~17215. (a) Section 220(a) of the Internal Revenue Code,~~  
21 ~~relating to deduction allowed, is modified to provide that the~~  
22 ~~amount allowed as a deduction shall be an amount equal to the~~  
23 ~~amount allowed to that individual as a deduction under Section~~  
24 ~~220 of the Internal Revenue Code, relating to medical savings~~  
25 ~~accounts, on the federal income tax return filed for the same taxable~~  
26 ~~year by that individual.~~

27 ~~(b) Section 220(f)(4) of the Internal Revenue Code, relating to~~  
28 ~~additional tax on distributions not used for qualified medical~~  
29 ~~expenses, is modified by substituting “10 percent” in lieu of “15~~  
30 ~~percent.”~~

31 ~~(c) Section 220(f)(5) of the Internal Revenue Code, as amended~~  
32 ~~by Section 1201(c) of the Medicare Prescription Drug,~~  
33 ~~Improvement, and Modernization Act of 2003 (Public Law~~  
34 ~~108-173), relating to rollovers from Archer MSAs permitted, shall~~  
35 ~~apply, except as otherwise provided.~~

36 ~~(d) The amendments made to this section by the act adding this~~  
37 ~~subdivision shall apply only to each taxable year beginning on or~~  
38 ~~after January 1, 2009.~~

39 *SEC. 6. Section 17215.4 of the Revenue and Taxation Code is*  
40 *amended to read:*

1 17215.4. (a) Section 223 of the Internal Revenue Code, relating  
2 to health savings accounts, shall not apply.

3 (b) *This section shall apply to taxable years beginning on or*  
4 *after January 1, 2005, and before January 1, 2009.*

5 (c) *This section shall remain in effect only until January 1, 2014,*  
6 *and as of that date is repealed.*

7 ~~SEC. 5.~~

8 SEC. 7. Section 17216 is added to the Revenue and Taxation  
9 Code, to read:

10 17216. For each taxable year beginning on or after January 1,  
11 2009, all of the following shall apply:

12 (a) Section 223 of the Internal Revenue Code, as added by  
13 Section 1201 of the Medicare Prescription Drug, Improvement,  
14 and Modernization Act of 2003 (Public Law 108-173), *and as*  
15 *amended by Title III of the Tax Relief and Health Care Act of 2006*  
16 *(Public Law 109-432)*, relating to health savings accounts, shall  
17 apply, except as otherwise provided.

18 (b) Section 223(e)(1) of the Internal Revenue Code, as added  
19 by Section 1201 of the Medicare Prescription Drug, Improvement,  
20 and Modernization Act of 2003 (Public Law 108-173), shall be  
21 modified by substituting the phrase “Section 17651” for the phrase  
22 “section 511 (relating to imposition of tax of unrelated business  
23 income of charitable, etc., organizations),” contained therein.

24 (c) Section 223(f)(4)(A) of the Internal Revenue Code, as added  
25 by Section 1201 of the Medicare Prescription Drug, Improvement,  
26 and Modernization Act of 2003 (Public Law 108-173), shall be  
27 modified by substituting “2½ percent” for “10 percent,” contained  
28 therein.

29 ~~SEC. 6.~~

30 SEC. 8. Section 19184 of the Revenue and Taxation Code is  
31 amended to read:

32 19184. (a) A penalty of fifty dollars (\$50) shall be imposed  
33 for each failure, unless it is shown that the failure is due to  
34 reasonable cause, by any person required to file who fails to file  
35 a report at the time and in the manner required by any of the  
36 following provisions:

37 (1) Subdivision (c) of Section 17507, relating to individual  
38 retirement accounts.

1 (2) Section 220(h) of the Internal Revenue Code, relating to  
2 medical savings accounts for taxable years beginning on or after  
3 January 1, 1997.

4 (3) Section 223(h) of the Internal Revenue Code, as added by  
5 Section 1201 of the Medicare Prescription Drug, Improvement,  
6 and Modernization Act of 2003 (Public Law 108-173), relating to  
7 health savings accounts.

8 (4) Subdivision (b) of Section 17140.3 or subdivision (b) of  
9 Section 23711 relating to qualified tuition programs.

10 (5) Subdivision (e) of Section 23712, relating to Coverdell  
11 education savings accounts.

12 (b) (1) Any individual who:

13 (A) Is required to furnish information under Section 17508 as  
14 to the amount designated nondeductible contributions made for  
15 any taxable year, and

16 (B) Overstates the amount of those contributions made for that  
17 taxable year, shall pay a penalty of one hundred dollars (\$100) for  
18 each overstatement unless it is shown that the overstatement is due  
19 to reasonable cause.

20 (2) Any individual who fails to file a form required to be filed  
21 by the Franchise Tax Board under Section 17508 shall pay a  
22 penalty of fifty dollars (\$50) for each failure unless it is shown  
23 that the failure is due to reasonable cause.

24 (c) Article 3 (commencing with Section 19031) of this chapter  
25 (relating to deficiency assessments) shall not apply in respect of  
26 the assessment or collection of any penalty imposed under this  
27 section.

28 (d) The amendments made to this section by the act adding this  
29 subdivision shall apply only to each taxable year beginning on or  
30 after January 1, 2009.

31 ~~SEC. 7.~~

32 *SEC. 9.* This act provides for a tax levy within the meaning of  
33 Article IV of the Constitution and shall go into immediate effect.